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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,230	03/28/2007	Takahiro Ohashi	007100.00001	5416
22907 7590 08/05/2010 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			EXAMINER MATTER, KRISTIN CLARETTE	
			ART UNIT 3771	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,230

Applicant(s)

OHASHI ET AL.

Examiner

KRISTEN C. MATTER

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 18 and 19 is/are allowed.
6) ☒ Claim(s) 1-17, 20 and 21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/GS-08)
Paper No(s)/Mail Date 8/30/6 and 6/6/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains claim language such as "comprising" which should be changed to non-claim language such as "has." Correction is required. See MPEP § 608.01(b).

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be "material to patentability as defined in 37 CFR 1.56."

In the instant application, "1.56(a)" should be changed to --1.56--.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-17 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 15 recite the limitation of the guide section "protruding further" in line 4. This language is somewhat confusing because it is unclear which direction the guide section must be protruding in with respect to the spouting port (i.e., externally, away from the vortex chamber, etc. would help clarify the claim).

Regarding claims 5 and 7, the equation " $(L^2 \times \tan \theta)$ " should be changed to $L^2 \times \tan \theta$ (with the parentheses removed) to clearly identify that there is an equation in the claims and to avoid any possible confusion with the mathematical symbols.

Regarding claim 12, in lines 5-6, "negative region" should be changed to negative pressure region-- and "the some part" should be changed to --the at least some part-- to keep claim language consistent.

Claims 3, 4, 8-11, 13, 14, 16, 17, and 20 are dependent on a rejected claim base and are therefore rejected for the same reasons outlined above with respect to claims 1, 12, and 15.

Allowable Subject Matter

Claims 6-10, 16, and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 18 and 19 are allowed over the prior art of record.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 11, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Fujisato (JP 2003-038382).

Regarding claims 1, 2, and 21, Fujisato discloses a massage nozzle comprising: a vortex chamber (72) having a water intake section (79) provided to for a vortical flow therein (see Figure 13) therein and a spouting port (3) provided to spout the vertical flow to form a negative pressure region (see supplied translated abstract in IDS); a guide section (A/B in Figure 12 or the inner canal area seen by reference character 73 in Figure 13) having a semi-cylindrical shape and protruding further distally with respect to the spouting port; and a water spray plate (6 or 76) provided at a distal end of the guide section (see Figures 12 and 13), the water-spray plate having an opening (at reference character p1 or 73) at a center thereof and a plurality of water-spray holes (6 or 76) around the opening. Fujisato further discloses a water supply means (that enters at supply pipe 4/64) for supplying water to the vortex chamber to allow a user to perform a suction massage (see abstract).

Regarding claim 3, as seen in Figure 12, the opening (near p1) is larger than the spouting port (where the angle θ is identified).

Regarding claim 4, the side wall (that directs water back through the handle) seen in Figure 13 can be considered a baffle plate provided at a plane of the water-spray plate opposite to the spouting port. Note that there is nothing in the claim structurally defining the baffle plate or its intended use, therefore it appears that any "plate" could be considered a baffle plate so long as it was provided at a plane of the spray plate opposite the spouting port.

Regarding claim 11, either of the areas considered the guide plate for claim 2 (i.e., A, B, or by reference character 73) can be considered a circumferential protrusion section protruding from the circumference of the opening in the water-spray plate to the vortex chamber (see Figures 12 and 13) since claim 1 does not require the guide section.

Claims 12-15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Jaworski (US 4,422,191).

Regarding claim 12, Jaworski discloses a nozzle capable of giving a massage comprising: a vortex chamber (25 and entire area in between reference character 14 and 30 in Figure 4) having a water intake section (12) provided to form vortical flow therein (column 4, lines 20-25) and a spouting port (48, end of tube 25, or the smaller area where the moving part 42 is held in place by) provided to spot the vortical flow so as to form a negative pressure region (column 6, lines 5-20); and a movable member (42) having an opening (48), at least some part of the movable member being inserted into the vortex chamber (the part that is to the right of the wall area 50 -- towards the inlet nozzle), the opening being provided to effect the negative pressure

region externally (i.e., as the movable member rotated the various angles of its walls would effect the negative pressure region somewhat), the at least some part including a first portion (far right of the movable member) that has a larger outside dimension than the spouting port (end of 25, opening into which the movable member is inserted by reference character 40/50, or the end 48 of the moveable member).

Regarding claim 13, the portion (42) of the movable member is externally protruding from the spouting port in a condition that the first portion (i.e., the right side of the movable member) abuts the inner wall of the vortex chamber in the vicinity of the spouting port (see Figure 4).

Regarding claim 14, as seen in Figure 4, the externally protruding portion (42) has a second portion which has a larger outside dimension than the spouting port.

Regarding claim 15, Jaworski discloses a nozzle capable of giving a massage comprising: a vortex chamber (25 and entire area in between reference character 14 and 30 in Figure 4) having a water intake section (12) provided to form vortical flow therein (column 4, lines 20-25) and a spouting port (48, end of tube 25, or the smaller area where the moving part 42 is held in place by) provided to spot the vortical flow so as to form a negative pressure region (column 6, lines 5-20); a guide section (the threaded wall area of 50) in a semi-cylindrical shape protruding farther distally with respect to the spouting port and having an inner diameter larger than that of the spouting port; a protrusion section (the part of the protrusion section 50 that comes into hold the movable member) protruding from an inner wall of the guide section towards a rotation axis of the vertical flow (see Figure 4); and a movable member (42) having an opening (48), at least some part of the movable member being inserted into the guide section (the part that is to the

right of the wall area 50 -- towards the inlet nozzle), the opening being provided to effect the negative pressure region externally (i.e., as the movable member rotated the various angles of its walls would effect the negative pressure region somewhat), the at least some part having a stopper (the bulbed portion 40 or the protruding region at 42) capable of abutting on the protrusion section.

Regarding claim 20, the projection portion (42) on the movable member can be considered a ring section having the opening inside and having a semi-cylindrical shape, and a stopper (the actual protruding part) protruding from an outer circumferential wall of the ring section.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujisato.

Regarding claim 4, Fujisato discloses another baffle plate (22) but does not specifically show that feature on the embodiments with a guide section. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the embodiments seen in Figures 12 or 13 with a baffle plate (22) as seen in Figure 5B in order to better direct the return fluid. Furthermore, there is nothing structurally preventing the use of a

baffle plate (22) on the embodiments with the guide sections and it appears as though any of Fujisato's embodiments would perform equally well with a baffle plate.

Regarding claim 5, Fujisato is silent as to the length of the guide section. However, absent a critical teaching and/or showing of unexpected results from such a dimension, examiner contends that the exact length of the guide section is an obvious design consideration to one of ordinary skill in the art. The dimension of the guide section with respect to the diameter openings and angles would contribute to the water suction force and pressure for example, which would be based on user preferences and what is considered a "safe" suction force for a massaged human body part. Furthermore, a mere change in dimension without a change in function does not patentably distinguish an invention over the prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 7,579,808 is cite to give an informal translation of JP 2003-38382 (since the Figures are the same, the reference was used to help clarify certain reference characters) and US 5,230,106 is cited to show another similar suction massage nozzle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristen C. Matter/
Examiner, Art Unit 3771